KA / BG-GPO/2515/WPP-47/2006-2008



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೨	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಮಾರ್ಚ್ ೧೫, ೨೦೦೭ (ಫಾಲ್ಗುಣ ೨೪, ಶಕ ವರ್ಷ ೧೯೨೮)	ಸಂಚಿಕೆ ೧೧

ಭಾಗ - ೪

ರಾಜ್ಯದ ವಿಧೇಯಕಗಳ ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ರಾಜ್ಯದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರದ ಮತ್ತು ರಾಜ್ಯದ ಶಾಸನಗಳ ಮೇರೆಗೆ ರಾಜ್ಯ ಸರ್ಕಾರವು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ರಾಜ್ಯಾಂಗದ ಮೇರೆಗೆ ರಾಜ್ಯಪಾಲರು ಮಾಡಿದ ನಿಯಮಗಳು, ಹಾಗೂ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ಮಾಡಿದ ನಿಯಮಗಳು.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

Notification

Dated: <u>15th February, 2007</u>

26th Magha, 1928 (Saka)

No 82/KT-LA (16/2004) /2007: In pursuance of Section 106 of the Representation of the people Act, 1951, (43 of 1951) the Election Commission hereby publishes the judgement of the High Court of Karnataka, Bangalore dated the 24.2.2006 in Election Petition No. 16 of 2004.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE DATED THIS THE 24TH DAY OF FEBRUARY 2006

BEFORE

THE HON'BLE MR. JUSTICE N.S. VEERABHADRAIAH ELECTION PETITION No.16. of 2004

BETWEEN

G.K. VENKATSHIVA REDDY
S/O G.V. KRISHNA REDDY
AGED ABOUT 56 YEARS
No, 1, VENKATESHWARA EXTENSION
CHINTMANI 563 125
KOLAR DISTRICT ....PETITIONER

(BY M/S PRAMILA ASSOCIATES)

AND

1. K.R. RAMESH KUMAR
   S/O LATE RAMAPPA
   AGED 56 YEARS
   R/O ADGAL, ADGAL POST
   ROYALPAD HOBLI SRINIVASAPUR TALUK
   KOLAR DISTRICT
2. H.T. SURESH
   S/O H. JAYADEVA GOWDA
   AGED 45 YEARS
   R/O HOGALAGERE
   YELDUR HOBLI SRINIVASAPURA TALUK
   KOLAR DISTRICT
3. SMT. NARAYANAMMA
   W/O LATE NARAYANAPPA
   AGED 50 YEARS
   THADIGOL VILLAGE
   THADIGOL POST
   RONUR HOBLI SRINIVASAPUR TALUK
   KOLAR DISTRICT ....RESPONDENTS

(BY SRI NANJUNDA REDDY, SR. ADV. FOR
SRI H.D. AMARANATHAN, SRI M.P. SUBBAIAH,
SRI R.S. PRASANNA KUMAR, SRI B.M. ARUN,
REUBEN JACOB FOR R-1)

ELECTION PETITION IS FILED U/S 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951 BY THE PETITIONER-CANDIDATE AT 2004 GENERAL ELECTION TO THE KARANTAKA LEGISLATIVE ASSEMBLY CONSTITUENCY NO. 69, SRINIVASAPUR ASSEMBLY CONSTITUENCY HELD ON 13.5.2004 PRAYING TO DECLARE THAT THE DECLARATION OF THE RESULT OF 1 ST RESPONDENT TO NO. 69, SRINIVASAPURA ASSEMBLY CONSTITUENCY AS NULL AND VOID AND FOR GRANT OF SUCH OTHER RELIEFS.

THIS PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Inspite of sufficient time granted, the petitioner is not diligent in leading evidence.

Learned Counsel for the respondent is present and opposed for any adjournment.

Considering the facts of this case, I see no grounds to grant any adjournment.

Accordingly, the petition is dismissed for default.

The parties shall bear their own costs.

The amount if any in deposit is ordered to be refunded.

By Order,

P.R. 20 **TAPAS KUMAR**

Secretary, Election Commission Of India.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

Notification

Dated: 15th February, 2007

26th Magha, 1928 (Saka)

No 82/KT-LA (12/2004) /2007: In pursuance of Section 106 of the Representation of the People Act, 1951, (43 of 1951) the Election Commission of India hereby publishes the judgement/order of the High Court of Karnataka, Bangalore dated the 6.4.2006 in Election Petition No. 12 of 2004.

IN THE HIGH COURT OF KARNATAKA, BANGALORE
DATED THIS THE 6TH DAY OF APRIL 2006
BEFORE
THE HON'BLE MR. JUSTICE P. VISHWANATHA SHETTY
Election Petition No. 12. of 2004

Between

Smt. Patil Vaishali Ashok
W/O Patil Ashok Narayan
Aged about 48 years
Residing at Manturga
Taluk Khanapur
District Belgaum

....Petitioner

[by Smt. H.D. Amaranathan for Smt. Nalini Venkatesh, Advocate]

AND

1. Digambarrao Yashwantrao Patil
S/o Yeshwantarao
Aged about 50 years
Resident at Post Idalhond
Khanapur, Taluk Khanapur District Belgaum
2. Prahlad Kallappa Remani
S/o Kallappa
aged about 40 years
Resident at Jad Navaga
Post Hebbal, Taluk Khanapur
Belgaum District
3. Mallikarjun Wali
S/o Basavanappa B. Wali
Aged about 54 years
Resident at Mukkam Post, Parishwad
Belgaum District-591 131
4. Rafique Khatalsaab Khanapuri
S/o Khatalsab Ibrahim Khanapuri
Aged about 42 years
Resident at T.P.C. No. 1101/c
Parishwad Road, Khanapur
Taluk Khanapur- 591 302
5. Gurav Mahesh Indrajeet
S/o Indrajeect
aged about 34 years
resident at Golihalli village
Post Bidi, Taluk Khanapur
Belgaum District
6. Patil Riyazahamad Abdulkarim
S/o Abdulkarim
Aged about 48 years
Resident at 663, Kakkeri, Taluk Khanapur
Belgaum District
7. Muralidhar Ganapathi Patil
S/o Patil Ganapathi
aged about 41 years
resident at House No 40-A ,Jalge
Taluk Khanapur, Belgum District
8. Raju Baburao Kusoki
S/o Babu Rao
Aged about 35 years
Resident at Soujanya, Plot No. 2
Deepak Galli Belgaum

9. Arjun Balkrishna Patil
   S/o Balakrishna Sateri Patil
   Aged about 58 years
   Resident at House No. 332, Ramnagar
   Taluk Joida, Karwar District
10. Nippanikar Yashwant Timmanna
   S/o Thimmanna
   aged about 55 years
   resident at Godholi, Taluk Khanapur
   Belgaum District
11. Ramesh Shatawaji Narvekar
   Satwaji
   Aged about 52 years
   Resident at Nittur, Taluk Khanapur
   Belgaum District

.....Respondents

[by Smt. Pramila Nesargi, Sr. Advocate for Sri Ravikumar. D. Gokakakar.,Advocate for R1]

This election petition filed under Section 81 of the Representation of People Act, 1951 by the petitioner-candidate at 2004 General election to the Karnataka Legislative Assembly Constituency No. 196 Khanapur Assembly Constituency held on 13.5.2004 through his Advocate Sri H.D. Amaranathan, praying this Hon'ble Court be pleased to call for records, set aside the election of 1st respondent from 196 Khanapur Constituency to Karnataka Legislative Assembly and etc.

This petition having been heard and reserved for orders, this day the court pronounced the following:

ORDER

In this petition, the petitioner who has lost election to the 1 st respondent to the Legislative Assembly Election held on 26th April 2004, has called in question the election of 1st respondent on the ground that the 1st respondent had indulged in corrupt practice within the meaning of section 123 (3) of The Representation of the People Act, 1951 [hereinafter referred to as 'the RP Act'] by appealing to the voters on communal grounds and also on the basis of Marathi language.

2. In 1A .3 of 2004 filed under Order VI Rule 16; Order 7 Rule 11(a) and Section 151 of the Code of Civil Procedure [hereinafter referred to as 'the Code'] read with Section 86 of the RP Act,] the 1st respodent has prayed for striking down the pleadings at paragraphs 8 to 14 of the Petiton; and in IA .I of 2005 filed under section 86 (1) of the Rp Act, he has prayed for dismissing the Election Petition for want of cause of action.

3. The facts in brief:

The petitioner in this petition had contested general elections held on 26th April 2004 for the Legislative Assembly from 196 Kahanapur Legislative Assembly Constituency situate within Belagum District. There were 12 candidates who had contested the elections. While the 1st respondent Digambarro Yashwanthrao Patil had contested the election as an independent candidate, respondent No. 2-Prahlad Kallappa Remani contested on behalf of JD (U); respondent No. 3-Mallikarjun had contested on behalf of JD (S) and respondent No. 4-Rafique Khatalasab Khanapur had contested on behalf of Indian National Congress. In the election, while the petitioner has secured 18, 747 votes, the 1st respondent had secured 19, 115 votes and the other candidates secured lesser number of votes than the petitioner. The 1st respondent, who has secured highest number of votes amongst all the candidates was duly declared as a Member of the Karnataka Legislative Assembly by the Returning Officer on 13th May 2004. It is the case of the petitioner that the 1st respondent though had contested the election as an independent candidate, he was in fact sponsored and supported by the Maharashtra Ekikarana Samithi. According to the petitioner, the Maharashtra Ekikarana Samithi is an unregistered association and it is neither a recognized political party not it is registered as a political party by the Election Commission of India. It is the grievance of the petitioner that the 1st respondent was able to get himself elected as Member of Karnataka Legislative Assembly on account of his appeal to the voters made both on communal grounds and on the basis of Marathi language; and the corrupt practice committed by him falls within the meaning of section 123(3) of the RP Act and therefore, his election is liable to be set aside by this Court. Further, he had also prayed to declare that he was duly elected to fill the said seat. While the respondents 5 to 11 though served remained exparte and didi not file statement of objections, the 1st respondent has filed his objections and denied every one of the allegations made by the petitioner and prayed that the petition may be dismissed as one devoid of any merits. The 1st respondent had filed IA. I of 2004 seeking for

rejection of the election petition. Since the said application was not signed by advocate, the same was dismissed by me by means of order dated 29th October 2004. Subsequently, the 1st respondent has filed IA .3 of 2004 seking for striking of paragraphs 8 to 14 of the election petition. As noticed by me earlier, he has also filed IA. I of 2005 seeking for dismissal of election petition for want of cause of action. It is the case of the 1st respondent in IA 3 of 2004 that averments made at paragraphs 8 to 14 of the election petition are liable to struck off on the ground that they are unnecessary, scandalous, frivolous and vexatious and that it tend to prejudice, embarrass and delay the fair trial of the election petition and do not disclose any cause of action. The said application was resisted by the petitioner by filing objections. In the objection statement, the petitioner has asserted that the averments made in the petition disclose necessary material particulars with regard to the appeal made by the 1st respondent to the voters both on the basis of marathi language and on communal grounds and as such the election of the 1st respondent is required to be set aside as he has committed Corrupt practice under Section 123 (3) of the RP Act.

4. I have heard Smt. Nalini Venkatesh, learned counsel appearing for the petitioner and Smt. Pramila Nesargi, learned Senior Counsel appearing along with Sri R.D. Gokakar for the 1st respondent on IA. 3 of 2004 and on IA. I of 2005. Smt. Pramila Nesargi, strongly urged that since the averments made in the election petition do not disclose the material facts, the averments made in paragraphs 8 to 14 of the election petiton is required to be struck off in exercise of the powers conferred on this Court under Order VI Rule 16 of the Code on the ground that the averments made at paragraphs 8 to 14 of the pleadings are totally unnecessary, scandalous, frivolous and vexatious and that it tends to prejudice, embarrass and delay the fair trial of the election petition and also it is in the nature of abuse of the process of the Court. According to the learned counsel, since the said averments do not disclose material facts on which the petitioner relies, which the petitioner is bound to state in the petition in terms of Section 83 (1)(a) of the RP Act, the averments made at paragraph 8 to 14 of the petition are required to be struck off and after striking of the said averments, the petition is required to be dismissed for want of cause of action, in exercise of the power conferred on this Court under Order VII Rule 11(a) of the Code. She submitted that while it may be permissible for this Court to permit the petitioner to amend the petition so far as the material particulars required to be set out as provided under Clause (b) of sub-section (1) of section 83 of the RP Act is concerned, the material facts required to be pleaded as provided under Clause(a) of sub-Section (1) of the said Section is not pleaded, it would be fatal to the election petition and such a petition is required to be dismissed for non-disclosure of cause of action. In support of her submissions she relied upon the decision of the Supreme Court in the case of SAMANT BALAKRISHNA V. GEORGE FERNANDES reported in 1969(3) SCC 238; in the case of UDHAV SINGH V MADHAVRAO SCINDIA reported in AIR 1976 SC 744 in the case of AZHAR HUSSAIN V. RAJIV GANDHI reported in 1986 (Supp) SCC 315; in the case of ABDUL HUSSAIN MIR, V. SHMASUI, HUDA AND ANOTHER reported in (1975) 4 SCC 533; in the case of MOESHWAR SAVE V. DWARKADAS YASHWANTRAO PATHRIKAR reported in (1956) 1SCC 394; in the case of RAMESH YESHWANT PRABHOO V. PRABHAKAR KASHINATH reported in AIR 1996 SC 1113; in the case of CHANDRAKANTH GOYAL. V. SOHAN JODH SINGH KOHLI reported in (1996) 1 SCC 378; in the case of KULTAR SINGH V. MUKHTIAR SINGH reported in AIR 1965 SC 141; in the case of JAGADEV SINGH V. PRATAP SINGH reported in AIR 1965 SC 183; in the case of L.R. SHIVARAMEGOWDA V. T.M. CHANDRASHEKAR reported in (1999) 1 SCC 666 and in the case of V. NARAYANASWAMY V. C.P. THIRUNAVAKKARASU reported in (2000) 2 SCC 294.

5. However, Smt. Nalini Venkatesh, learned counsel appearing for the petitioner while vehemently countering each one of the contentions urged by the learned counsel for the 1st respondent, pointed out that the averments made in the petition clearly set out the material facts as well as the material particulars. In this connection, she drew my attention to paragraphs 12, 13 and 14 of the petition wherein, according to the learned counsel, the material facts regarding the appeal made both on the basis of communal ground and on Marathi language is pleaded. She pointed out that the pamphlet Annexure-C referred to in paragraph 12 of the petition and the paper publication Annexure-1) referred to in paragraph 13 of the petition in addition to the averments made in the petition, clearly disclose the material facts with refeence to the appeal made with the consent of the 1st respondent on the basis of communal grounds and marathi language. In support of her contention that the averments made in the petition satisfy the requirements of the pleadings that are required to be made in an election petition challenging the election on the ground of corrupt practice under section 123(3) of the RP Act, she relied upon the judgment of the Supreme Court in the case of SARDARHARCHARAN SINGH BRAR V. SURH DARSHAN SINGH reported in AIR 2005 SC 22;in the case of H.D. Revanna V.G. PUTTASWAMY GOWDA reported in AIR 1999 SC 768; in the case of D. RAMACHANDRAN V. R.V. JANAKIRAMAN reported in AIR 1999 SC 1129; in the case of V.S. ACHUTHANANDAN V. P.J. FRANCIS reported in AIR 1999 SC 2045; in the

case of MOHAN V. BHAIRON SINGH SHEKHAWAT reported in (1996)7 SCC 679 and in the case of MOHAN RAWALE V. DAMODAR TATYABA reported in (1994)2 SCC 393.

6. In the light of the rival contentions advanced by the learned counsel appearing for the parties the two questions that would fall for my consideration are:

i) Whether the averments made in paragraphs 8 to 14 of the petition are required to be struck off in exercise of the power conferred on this Court under Order VI Rule 16 Code read with Section 87 of the RP Act;

ii) whether the election petition is required to be rejected by this Court in exercise of the power conferred on it under Order VII Rule 11(a) of Code on the ground that the petitioner has failed to set out 'material facts' as required under clause (a) of sub-section (1) of Section 83 of the RP Act?

7. Since it is the grievance of the 1st respondent that the averments made in paragraphs 8 to 14 of the petition do not refer to the material facts relating to corrupt practice committed by the 1st respondent, it is useful to refer to the said averments at the very outset. They read as hereunder;

8. It is submitted that the 1st respondent (returned candidate) has committed the corrupt practice of appealing on communal grounds and also on the basis of his language in Marathi. The same comes within the mischief of Section 123(3) of the Representation of Peoples Act, 1951 and thus, his election is liable to be set aside.

9. The material facts and particulars of the corrupt practice committed by him are as follows;

The petitioner submits that the Khanapura Legislature Assembly Constituency comprises of the villages from khanapur Taluk which is a part of Belgaum District. The Belgaum District format part of erst while province of Bombay. The population of Belgaum District consists of people speaking kannada and marathi language. Taking advantage of the people of marathi and kannada speaking people in majority in several pockets of Constituency and the District, there was agitation for bifurcation of the erst while provinces in India on the basis of language which led to appointment of a Commission headed by Justice Mahajan, who after making an intense study of the problems, recommended the erst while Belgaum District to be included in the State of Karnataka which was earlier include in the State of Bombay (now Maharashtra). The marathi speaking people in the State of Karnataka who were agitating in the Belgaum District which was in the State of Bombay which has now become State of Maharashtra. The said agitations took violent turns and resulted in several clashes between Kannada speaking and Maratha speaking people in Belgaum. The candidates of Maharashtra Ekikarana Samithi under the banner of Maharashtra Ekikarana Samithi were appealing to the sentiments of marathi speaking people and their cause for inclusion of Belgaum District in the erstwhile province of Bombay.

10. It is submitted that though the Mahrashtra Ekikarana Samithi is not a political party, the candidates belonging to the said group used to contest the elections as independent and after election, they continued their agitation even after they were elected to the Karnataka Legislative Assembly. All the candidates so elected used to wear Saffron Colour turbans and indulge in unseemly provent during the joint session addressed by the Governor of Karnataka by shouting slogans and then by creating furor in the house. It is further submitted that they appealed to the voters during the elections to the sentiments of the Marathi speaking people who were voters with a view to promote parochial sentiments to gain electoral advantage.

11. The 1st respondent belongs to Marathi community and is closely associated with the Khanapur Taluk Maharashtra Ekikarana Samithi and he has held several offices in the said samiti including that of the President. The 1st respondent has associated himself in various agitaions of the Maharashtra Ekikarana Samithi demanding inclusion of the Marathi speaking border areas in Karanada in the state of Maharashtra.

12. It is submitted that campaigning to the election in the Khanapur Constituency commenced on 11.4.2004 and after the withdrawal of nomination papers on 11.4.2004. The 1st respondent was the candidate sponsored by Maharashtra Ekikarana Samithi and he actively campaigned on the basis of Maratha, Marathi culture and Marathi language, Caste and community. The Samit's Taluk unit i.e. Khanapur Taluk Maharashtra Ekikarana Samithi Samiti had published a pamphlet on 18.4.2004 which was printed at Kamala Printing Press, Khanapur,mentioning the name of Sri Vilasrao Krishna Belgaonakar, Chitnis, Maharashtra Ekikarana Samithi, as the publisher under the title" TO ALL THE VOTERS OF KHANAPUR TALUKA: LADIES & GENTLEMEN WHO ARE PROUD OF MARATHI LANGAUGE-PUBLIC APPEAL" The said pamphlet also contained an appeal as follows: "They gave their lives for the cause of Marathi language. The entire marathi people settled their party difference united

under Maharashtra Ekikarana Samithi to fight the injustice caused ti them" The said pamphlet was printed and published at the instance of 1st respondent. Further, the publisher Sri Vilasrao Krishna Belagaonkar was authorized by the 1st respondent to get the same printed and to publish it The pamphlets were. circulated throught the Khanapur Constituency seeking votes in favour of the 1st respondent by the supporters of the 1st respondent who were canvassing on his behalf. A pamphlet containiing the above appeal is produced herewith and marked as ANNEXURE-C'. It is submitted that the 1st respondent had solicited votes on the basis of caste,culture and language and had got himself elected to the Karnataka Legislative Assembly.

13. It is submitted that the 1st respondent had arranged several public meetings in the Khanapur Constituency and in one such meeting held at Karalga, the supporters of the 1st respondent namely- Suresh Desai, pandurang Desai, Balasaheb Shelar, Maruti Kodachwakar and Jagannath Birje, had made speeches on the basis of Marathi language. They had appealed that as border dispute is in final stages, it is necessary to vote and elect the official candidate of the Samiti and for that, everybody should stand firmly behind 1st respondent and for protecting Marathi Bhasha (language) and Marathi Culture, all should support the Samiti and elect the 1st respondent with big margin. The said persons had the consent of the 1st respondent and the 1st respondent was personally present in the said meeting. The report pertaining to the said meeting was published in Swatantra Pragati Belgaum, a daily newspaper in Marathi Language, in page 4 of its issue dated 21.4.2004 The photocopy of the press clipping is produced herewith and marked as ANNEXURE. 'D' Thus the 1st respondent has committed a corrupt practice of communal appeal and appeal on the basis of language which is prohibited under Section 123(3) of the R.P. Act, 1951.

14. The petitioner has lost more than 1000 votes in view of the appeal made by the 1st respondent on the basis of caste, culture and marathi language. The fact that a large number of voters belong to marathi speaking community were attacted by such appels, which are prohibited under the R.P. Act, 1951, and hence the petitioner has lost the election, as otherwise, she would have won the election by a margin of more than 500 votes and hence she is entitled to be declared as duly elected to fill the seat of No. 196, Khanapur Karnataka Legislative Assembly Constituency.

8. The pamphlet Annexure-C and Paper publication Annexure-D referred to in paragraphs 12 and 13 of the petiton are in Marathi language. However, it is useful to extract the English translated version of the said publications. The same read as hereunder:

Pamphlet-Annexure-C:

"TO ALL THE VOTERS OF KHANAPUR TALUKA:
LADIES AND GENTLEMEN WHO ARE PROUD OF MARATHI LANGUAGE.

"PUBLIC APPEAL"

Salutations to Ladies & Gentlemen Voters,

After India (Bharat) got freedom, in order that the people should understand the administration, it was decided to reorganize the States on the linguistic basis and, therefore, Fazal Ali Commission was constituted On the basis of the said Commission's report, Belgaum, Karwar, Supa, Haliyal, Khanapur Belgaum Taluk, Belgaum City, Nipani, Bhalki, Santpur, Aurad the Marathi Linguistic area was included in Karnataka and a grave injustice has been caused to 20 lakh marathi speaking people of this area. The Fazal Ali Commission's report was published on 16th January1956b and spontaneous outrage was broken in the entire border area. On 17th January 1956, Marathi people spontameously came out on the streets. The police opened fire on public as a result of which 4 people in Belgaum and sou. Kamalabai Mohite of Nipani and totally 5 persons succumbed to the bullets."They gave their lives for the cause of Marathilanguage. The entire marathi people settled their party difference united under Maharashtra Ekikarana Sumithi to fight the injustice caused to them by following the peaceful path shown by Mahatma Gandhini, in a democratic way, by resorting to different ways like appeal, representation, mass picketing, satyagrapah,sara-bandi (no tax) etc, and they struggled continuously. There is no parallel to this in Independent India. During this period, the M.E.S. won various elections from village panchayat Level to Legislative Assembly and expressed their desire to merge aforesaid places with Maharashtra. Let the injustice caused to us could not be done away with Ultimately, all Samiti Leaders from the entire Border area authorized the five member Committee headed by the then Chief Minister of Maharashtra Mr. Manohar Joshi, senior Leader Madhu Dhandavate, Sharad pawar, M.P. Ram Kapse, M.P. and N.D. Patil a senior leader of She. Ka Pa. to solve the border dispute. In 1997, Khanapura Taluk M.E. Samiti decided unanimously to file a suit before the Supreme Court for resolving border dispute finally. For implementing this resolution Khanapur Taluk M.E.S., Ex M.L.A., V.Y.Chavan

along with other supporters made constant efforts. After the five member Committee was entruted with the responsibility, the Chief Minister Manohar Joshi appointed a Three Member Committee under the Chairmanship of the former Chief Justice of India Justive Y.V. Chandractud with Advocate Vasantrao Bhandare and V.T. Walawalkar to examine the feasibility of approaching the Hon'ble Supreme Court in the matter. The committee examined the legal aspect and submitted its report to the Government of Maharashtra that if the Border dispute is taken to the Hon'ble Supreme Court of India, Maharashtra will get justice. Even after receiving this report, the five Member Committee attempted to solve the matter amicably. But there was no co-operation from the Government of Karanataka. As all efforts to sovle the dispute amicably failed, ultimately, Five Member Committee resolved unanimously on 6th November 2002 to approach the Hon'ble supreme Court. The Government of Maharashtra approved this recommendation on 12th February 2003 and appointed a three member Committee consisting of senior leader Sri N.D. Patil, Vasanth Bhandare, Advocate and V.T. Walawalkar, Advocate and decided to prepare the suit in three months. However, as considerable time was required for collecting the necessary documents for preparing the case, finally the case relating to the border dispute was filed in the Hon'ble Supreme Court on 19.3.2004.

For the preparation of this suit, khanapur Taluk Samiti has provided all information and documents about khanapur Taluka. Constant efforts have also been made to get the case filed at the earliest. In this border agitation the people from border area gave a tenacious fight. In the same manner, all parties in Maharashtra have given support. Shivsena has also fought shoulder to shoulder for the cause. Apart from this in Bombay, they have resorted to agitation and 67 persons have sacrificed their lives. The people who are living on the border can never forget it. But the entire agitation has always been lead by M.E.S. only and now the border dispute is before the Hon'ble supreme Court. Under such circumstances, it is imperative that the candidate of MES only should get elected. For the elections to the held on 26th April 2004 to Karnataka Assembly, Khanapur Taluk Maharashtra Ekikarana Samithi has selected as its official candidate Mr. Digamber Yeshwatro Patil, an impartial, daring and worker of great integrity. AS the border dispute is now before the Hon'ble Supreme Court to represent the case, our representative should be a determined and person who does not fall prey to any inducements. This is the last election on the Border dispute. After taking into copnsideration all the above aspects, brother and sister voters are requested to cast your valuable vote and elect Sri Digambar Yeshwanthrao Patil and make M.E.S. victorious with thumping majority. This is our appeal to you all.

Election symbol of Samiti is Aeroplane. You are requested to press the button in front of the picture of Aeroplane to help the Samithi for its victory.

Your faithfully

9. **Paper Publication:-** Annexure-D read as hereunder:

"SWATANTRA PRAGATI, BELGAUM
WEDNESDAY, 21ST APRIL 2004 (PAGE 4)
Public Campaign meeting at Karlaga of Digabar Patil

Khanapur Dated 20:

A public meeting was held recently under the Presidentship of Laxman Patil to support the candidate of Mr. Digambar Yeshwanthrao Patil, the official candidate of Khanapur Taluka Maharashtra Ekikarana Samithi. In this meeting, a large number of workers, old and young people and women from Karalga and surrounding villages attended in the meeting.

In the beginning Mr. Bharmani Patil welcomed the gathering.

The border dispute being in its final stages, it is imported that the official candidate of the Samiti should win and for that purpose, everyday should stand firmly behind him and for protecting Marathi Bhasha (Language), and Marathi Culture, all should support Samithi and elect Digambar Patil with big margin. The above appeal was made by Suresh Desai, Pandurang Desai, Balasaheb Shelar, Maruti Kodachwakar and Jagannath Birje.

Digambar Patil expressed that while working strenuously for the solution of the Border dispute and for the all round development of the Taluk, he will sacrifice his body, mind and money. He appealed finally for the victory of the M.e.s. he should be elected on behalf of village people, the President Laxman Patil offered unanimous support of Digambar Patil."

10. Now, let me examine each one of the questions, which arise for consideration in this petition.

Regarding 1st Question :

11. As noticed by me earlier, Section 87 of the RP Act provides that subject to the provisions of the Act and the Rules framed thereunder, every election petition is required to be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under Code. Order VI Rule 16 of the Code provides for striking down the pleadings by the Courts. The same reads as hereunder:

"Order VI Rule 16 of the CPC:

Striking out pleadings.- The Court may at any state of the proceedings order to be struck out or amended any matter in any pleading"

a) which may be unnecessary, scandalous, frivolous or vexations, or
b) which may tend to prejudice, embarras or delay the fair trial of the suit, or which is otherwise an abuse of the process of the Court."

Order VII Rule 11(a) provides that the Courts shall reject the plaint where it does not disclose a cause of action. The same reads as hereunder.

"Order 7 Rule 11(a).- Rejection of plaint.-

The Plaint shall be rejected in the following cases.-

(a) where it does not disclose a cause of action."

It is also useful to refer to Clauses (a), (b) and (c) of sub-section (1) of the Section 83 of the RP Act which read as hereunder:

"83. Contents of the petition.- (1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;
(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice nd the date and place of the commision of each such practice and
(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings;

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof."

Sections 87 of the RP Act reads as hereunder:

"87. Procedure before the High Court.- (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearlys as may, be in accordance with the procedure applicable under the Code of Civil procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of witness or witnesses is not material for the decision of petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition."

12. It is also now well-settled by the decisions of the Supreme Court that the provisions of Order VI Rule 16 of Code can be made applicable and the pleadings can be struck off and the election petition also can be dismissed for want of cause of action by applying the provisions contained under Order VII Rule II(a) of Code.

13. From the reading of Clause (a) of Sub-Section (1) of Section 83 of the RP Act, it is clear that the said clause mandates the election petitioner to make a concise statement of material facts which he relis. Clause (b) of Sub-Section (1) of the said Section requires the petitioner to set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Clause (c) of Sub-Section (1) of the said Section requires that an election petition should be signed and verified in a manner laid down in the Code for verification of pleadings. However, the proviso given to the said Clause, further provides that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Section 100 of the RP Act provides that subjects to the provisions of Sub-Section (2), if the High Court is of the opinion that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, the election of the returned candidate shall be declared as void. Section 123 of the RP Act sets out various types of corrupt practices, for the purpose of the Act. Sub-Section (3) of Section 123 provides that the appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the the ground of his religion, race, case, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the lection of any candidate, amounts to corrupt practice. It is useful to extract sub-Section (3) of Section 123 of the RP Act. The same reads as hereunder:

"123. Corrupt practices.-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) The appeals by a candidate or his agent or by any other person with the consent of a candidates or his election agent to votes or refrain from voting for any person on the ground of his religion, race, case, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudically affecting the election of any candidate."

14. Now, it is well settled by the decisions of the Supreme Court that failure to plead even a single material fact leads to an incomplete cause of action and imcomlete allegations of such a charge are liable to be struck off under Order VI Rule 16 of Code. If the election petition lacks material or full particulars as required to be to be set out as provided under clause (b) of Sub-Section (1) of Section 83 of the RP Act, it is open to the Court to permit the election petitioner to amend the petition by furnishing such particulars even after the expiry of the limitation period prescribed and it is only even after affording such an opportunity if the petitioner fails to furnish the material particulars, the election petition could be rejectd at the thereshould. In this connection, it is useful to refer to the decisions of the Supreme Court cited by the learned counsel appearing for the parties.

15. In the case of SAMANTH N. BALAKRISHNA (supra) at paragraph 29, the Supreme Court has observed as follows:

"Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of Peoples Act. Here we have to consider Sections 81, 83 and 84 of the Act. the first provides the procedure for the presetation of the election petition. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. That as we have shown above, creates the substantives right. Section 83 then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alieges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of commission of each such practice. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the differences between material facts and particulars? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claimss become bad. The function of particulars is to present as full a picture of cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus, material facts will mention that a statement of fact (which must be set out, was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to the false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making his statement, with the date time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts, it will not do merely to quote the words of the Section because then the efficiency of the words 'materil facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be co-related to one of the heads of corrupt practice. Just as a plaint without disclosing a proper of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts have to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismmisal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts. The particulars giving the further information to complete the picture. This distinction is brought out by the provisions of section 86 although the penalty of dismissal is taken away. Sub-section (5) of that section provides

The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such

manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

The power of amendment is given in respect of particulars but there is a prohibition against an amendment which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition'. One alleges the corrupt practice in the material facts and they must show a comlete cause of action. If a petitioner has omitted to allege a corrupt practice, he cannot be permmited to give particulars of the corrupt practice. The argument that the latter part of the fifth sub-section is directory only cannot stand in view of the contract in the language of the two parts. The first part is enabling and second part creates the positive parts. Therefore, if a corrupt practice is not alleged, the particulars cannot be supplied. There is, however, a difference of approach between ther several corrupt practices. If for example, the charge is bribery of votes and the particulars give a few instances, other instances can be added; if the charge is use of vehicles for free carriage of voters, the particulars of the cars employed may be amplified. But if the charge is that an agent did something, it cannot be amplified by giving particulars of acts on the part of the candidate or vice versa. In the scheme of election law, there are separate corrupt practices which cannot be said to grow out of the material facts related to another person. Publication of false statements by an agent is one cause of action, publication of false statements by the candidate is quite a difference cause of action. Such a cause of action must be alleged in the material facts before particulars may be given. One cannot under the cover of particulars of one corrupt practice give particulars of a new corrupt practice. They constitute different causes of action."

(emphasis supplied)

16. In the case of UDHAV SINGH (supra), it is observed as follows:

"37. Line the Code of Civil Procedure, this section also envisages a distinction, between 'material facts' and 'material particulars'. Clause (a) of the sub-section (1) corresponds to Order 6, Rule 2. while Clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between 'material facts' and 'material particulars' is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for way of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the Court has discretion to allow the petitioner to supply the required particulars even after the expiry of the limitation.

38. All the primary facts, which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are 'material facts'. In the context of a charge of corrupt practice 'material facts' would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short all those facts which re essential to lothe the petitioner with a complete cause of action, are 'material facts' which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a)."

17. In the case of AZHAR HUSSAIN (supra), the Supreme Court, at paragraphs 9, 10 and 12,. has observed as follows:-

"9. The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the Code cannot be exercised.

10. There is thus no substance in this point which is already concluded against the appellant in Hardwarilal V. Kanwal Singh wherein this Court has in terms negative this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the Judgement of A.N. Ray. J., who spoke for the three judge bench:- (SCC p.221 paras 22 and 23)

'The allegations in paragraph 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure It is not stated in what manner the assistance was for the furtherane of the prospects of the election The gravamen of the charges of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abeting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of an suggestion as to what that assistance was the election is lacking in the most vital and essential material fact to furnish a cause of action.

Coursel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because section 86 of the Act coferred power on the High Court to dismis the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 6. Under Section 87 of the Act every election petition shall be tried by the High Court as merely as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed.

11. xxx xxx xxx

12. Learned counsel for the petitioner has next argued that in any even the powers to reject the election petition summarily under the provisions of Code of Civil Procedue should not be exercised at the therehold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised with respect to the learned counsel, it is an argument which it is difficult to comprehened. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove asbortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of damocles need not be kept hanging over his ead unneessarily without point or purpose. Even in an ordinary civil litigation the copurt readily exercises the power to reject a plaint if it does not disclose any cause of action all the power to direct the concerned party to strike out unecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the proces of the court. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording an evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants or relieved of psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge theirduties. And so that they can adjust their affairs on the footing that the litigation will not meet their demands on their time or resources will not impede their future work and they are free to undertake and fulfill other commitments. Such beings the position in regard to matter pertaining to ordinary civil litigation, there is greater reason for taking the same view in regard to matters pertaining to election. So long as the sword of amocles of the election petition remains hanging an elected member of the legislature would not be sufficiently free to devote his whole hearted attention to matters of public importance which clamour for his attention in his capacity as an elected reresettive of the conerned constituency. The time and attention emanded by his elected office will have to be liverted to matters pertaining to the contest of the election petition. inserted of being engaged in a campaign to relive the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, hes would be engaged in campaign established that he has in fact been duly elected. Instead of discharging his functions as the electeds representative of the people, he will be engaged in a struggle to establish that he has in fact won the verdict and the confidence of the electorate the police. He will have not onlys to win the vote of the people but also to win the vote of the court in a long drawn out litigation before he can whole heartedly engage himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as a hindrance if he be entrusted with some public office in his elected capacity. He may even have occasion to deal with the representatives of foreing powers who may wonder whether he will eventually succed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stem metal, the constraint introduced by the pendency of an election petition may have some impact on his subconscious mind without his every being or becoming ware of it. Under the circumstances, there is greater reason why in or democratic set up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of the duties towards the nation, the contraoversy is set at rest at the earliest if the facts of the case and the law so warrant. Snce the court has the power to act at the threshold the power must be exercised at the threshold itself in case the court is satisfied that it is a fit case for the exercise of such power and that exrcise of such powers is warranted under relevant provisions of law. To wind up the dialogue, to contend

that the powers to dismiss or reject an election petition or pass appropriate orders, should not be exercised except at the stage of final judgement after recording the evidence even if the fact of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled."

18. Further at paragraph 14 of the said judgement, the Supreme Court has observed as follows:

"14. Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression 'material facts and particulars, which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.

(1) What are material facts and particulars? Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition.

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded.:

(a) mode of assistance;

(b) measure of assistance; and

(c) all various forms of facts pertaining to the assistance.

(3) In the context of an allegation as regards procuring obtaining, abetting or attempting to obtain or procure the assistance of government servants in election it is absolutely essential to plead the following:

(a) kind or form of assistance obtained or procured;

(b) in what manner the assistance was obtained or procurred or attempted to be obtained or procured by the election candidates for promoting the prospects of his election.

(4) The returned candidate must be told has to what assistances he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured.

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistances was rendered.

(6) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured the time and date of the same, all these will have to be set out in the particulars."

19. Therefore, from the law laid down by the Supreme Court, it is clear that the test required to be applied while considering the question is, whether the Court could give a verdict in favour of the election petitioner in case the returned candidate does not appear and oppose the election petition on the basis of the facts pleaded in the petition.

20. While considering the similar question whether the averments made in the petitioner are required to be struck off in exercise of the power conferred on this Court under order VI Rule 16 of Code read with Section 87 of the RP Act in the case of K.S. Eshwarappa v. H.M. CHANDRASHEKARAPPA reported in ILR 2001 KAR 4454 after referring to the decision of the Supreme Court in the case of D. RAMACHANDRAN v. V. JANAKIRAMAN reported in AIR 1999 SC 1128, I have taken the view that want of cause of action cannot be a ground to strike off the pleadings though it may be a ground to dismiss the petition for want of cause of action in exercise of the power conferred on this Court under Order VII, Rule 11(a) of Code.

21. However, it is necessary to point out that the Supreme Court in the case of MAHENDRA PAL v. RAM DASS MALANGER reported in AIR 2000 SC 16, has taken the view that the failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order VI Rule 16 of Code. It is useful to refer to the observations made at paragraph 7 of the judgment, which reads as follows:

* Section 83 (1)(g) of the Act mandates that in order to constituted a cause of action, all material facts, that is, the basic and preliminary facts which the petitioner is bound under the law to substantiate in order to succeed, have to be pleaded in an election petition whether in an election petition, a particular fact is material or not and as such required to be pleaded is a question which depends upon the nature of

the charge levelled and the facts and circumstances of each case The distinction between 'naterial facts' and 'particulars' has been explained by this Court in a large number of cases and we need not refer to all those decide 1 cases. Facts which are essential to disclose a complete cause of action are material facts and are essentially required to be pleaded. On the other hand 'particulars' are details of the case set up by the party and are such pleas which are necessary to amplify refine or explain material facts. The function of particulars is thus, to present a full picture of the cause of action to make the opposite party understand the case that has been set up against him and which he is required to meet. The distinction between material facts and material particulars' is indeed important because different consequences follow from a deficiency of such facts or pariculars in the pleadings. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. In the case of a petition suffering from deficiency of material particulars the Court has the discretion to allow the petitioner to supply the required particulars even after the expity of the limitation Thus, whereas it may be permissible for a party to furnish particulars even after the period of limitation for filing an election petition has expired, with permission of the Court, no material fact unless already pleaded, can be permitted to be introduced after the expiry of the period of limitation."

(cmphas is supplied)

22. The principal enunciated by the Supreme Court in the case of MAHENDRA PAL (supra) is noticed and extracted at parageaph 11 by the Supreme Court in the case of SARDAR HARCHARAN SINGH BRAR (supra).

23. In the light of the observation made by the Supreme Court in the case of MAHENDRA PAL (supra) extracted above, which is approved by the Supreme Court in the case of SARDAR HARCHARAN SINGH BRAR (supra), I am of the view that the view taken by me in the case of K.S. ESHWARAPPA (supra) that for want of cause of action or incomplete allegations of such a charge, the pleadings in the petition are not liable to be struck down, does not appear to be the correct principal of law enunciated by me. Therefore, I am of the view that if the averments made in the petition suffer from lack or incomplete allegation of material facts leading to an incomplete cause of action, such pleadings are required to struck off by this Court under Order VI Rule 16 of code. In the light of the above conclusion, the next question that would arise for consideration is as to whether the averments made in paragraphs 8 to 14 of the petitioner are required to be struck off in exercise of its power under Order VI Rule 16 of Code read with Section 87 of the RP Act?

24. At paragraph 8 of the petition the petitioner has alleged that the 1st respondent has committed corrupt practice of appealing to voters on communal grounds and also on the basis of marathi language and as such the same comes within the mischief of Section 123(3) of the RP Act. The averments made at paragraph 9 only refer to the fact that Khanapur Legislative Assembly Constituency comprises of the villages from Khanapur Taluk which is a part of Belgaum District and the Belgaum District formed part of erst while province of Bombay; the population of Belgaum District consist of people speaking Kannada and Marathi languages; and on the basis of the language a Commission headed by Justice Mahajan had recommended the erst while Belgaum to be included in the State of Karnataka which was carlier included in the State of Bombay (now Maharashtra); and marathi speaking people in the State of Karnataka were agitating for inclusion of Belgaum District in the State of Bombay; the candidates of Maharashtra Ekikarana Samithi under the banner of Maharashtra Ekikarana Samithi were appealing to the sentiments of marathi speaking people and their cause for inclusion of Belgaum District in the erstwhile province of Bombay. From the averments made in paragraph 9 of the petition referred to above. I find it difficult to take the view that the 1st respondent has indulged in corrupt practice of either appealing to the voters on communal grounds or on the basis of marathi language. Similar is the position in so far as paragraph 10 of the petition is concerned. The averments made in paragraph 10 of the petition relates to the protest that candidates belonging to Maharashtra Ekikarana Samithi used to carry out after they were elected to the Legislative Assembly. There is no reference made to the appeal made by the 1st respondent during the course of the election held on 26th April 2004. The averments made in paragraph 11 of the petition refers to the fact that the 1st respondent belogs to Maratha Community and is closely associated with the Khanapur Taluk Maharashtra Ekikarana Samithi and has held several offices in the Samithi including that of the President and was associated himself in various agitations of Maharashtra Ekikarana Samithi demanding inclusion of the Marathi speaking border areas in Karnataka in the state of Maharashtra. I do not find anything in paragraph 11 of the petition, which can be construed as the 1st respondent indulging in any corrupt practice by way of appealing either on communal sentiments or on the basis of marathi language. At paragraph 12 of the petition, the petitioner has asserted that the 1st

respondent was the candidate sponsored by the Maharashtra Ekikarana Samithi and the Khanapur Taluk Maharashtra Ekikarana Samihti has also printed pamphlet in marathi language. If the statement made in pamphlet Annexure-C referrd to above is carefully perused, it only highlights that the step taken for re-organisation of States on the basis of languages has resulted in injustice to 20 lakhs of marathi speaking people in Belgaum District and on account of the spontaneous outburst made by the marathi speaking people and the action of the police made, several marathi speaking people sacrificed their lives for the cause of marathi and entire marathi speaking people settled their party differences and united under Maharashtra Ekikarana Samithi to fight the injustice caused to them by following the peaceful path shown by Mahatma Gandhiji in a democratic way, by resorting to different ways like appeal, representation, mass picking, etc. The same also refers to the fact that the border dispute is now before the Supreme Court and therefore, it is imperative that the candidate of Maharashtra Ekikarana Samithi only should get elected for the elections to be held on 26th April 2004 to the Khanapur Assembly constituency,.In the pamphlet it is asserted that the Maharashtra Ekikarana Samithi has selected the 1st respondent as its official candidate, as he was impartial, daring and a worker of great integrity; and as the border dispute is before the Supreme Court, to represent the case, the person should be determined and does not fall prey to any inducements and as that was the last election on border dispute and therefore with a view to see that the marathi speaking area in Belgaum District is taken away from Karnataka State and included in Maharashtra State, the 1st respondent should be elected. From the contents of Annexure-C, to may mind it appears that it refers to a situation where large number of Marathi people are compelled to stay in karnataka area and if that area has to be bifurcated from karnataka and included in the state of Maharashtra it is necessary to elect the 1st respondent, who is impartial, daring and worker of great integirty. Further, the averments made in paragraph 12 of the petition, except stating that the 1st respondent was a candidate sponsored by Maharashtra Ekikarana Samithi, it is not alleged that the pamphlet annexure-C came to be issued at the behest of the 1st respondent. From pamphlet Annexure-C, it is also not possible to take the view that the statements made therein could be construed as an appeal made either on the basis of community, caste or on the basis of language. As noticed by me earlier, the substance of the statement made in the pamphlet-Annexure-C is that great injustice has been caused to marathi speaking people by including such of those areas where marathi speaking people are in predominance, in the State of Karnataka instead of including those areas in the State of Maharashtra at the time of reorganisation of States;and since the dispute regarding the border issue is pending before the Supreme Court the 1st respondent would the right person to fight for the cause of inclusion of those areas in the State of Maharashtra. Even assuming that the pamphlet Annexure-C came to be issued with the consent of the 1st respondent and at his behest, in my view, the statement made in the pamphlet, cannot be construed as the statement made either on the basis of community or marathi language.The appeal relates to the injustice done to the marathi speaking people by including the parts of marathi speaking areas in the State of Karnataka and the effective steps required to be taken for inclusion of those areas in the State of Maharashtra. As noticed by me earlier, even if it is assmued at this stage that the Maharashta Ekikarana Samithi intends to support the 1st respondent and there is a reference made to the reorganisation of States on the basis of language and on account of that injustice was caused to marathi speaking people as the area where marathi speaking people are predominant was included in the State of Karnataka, the contents of pambhlet Annexure-C cannot be construed as an appeal made to the voters either on the basis of marathi language or on communal grounds. The substance of appeal is to be understood as only one communicating to the marathi speaking people that great injustice was done by including the marathi speaking area in the State of Karnataka instead of including them in the state of Maharashtra and to set right the injustice done, the 1st respondent would be the right person to be elected as member of the Legislative Assembly. Therefore, when the States have been recorganised on the basis of language, If is not possible to take te view that the statements maade in pamphlet Annexure-C and also the averments made in paragraph 12 amounts to corrupt practice indulged by the 1st respondent.

25. Now the question is, whether the averments made in paragraph 13 of the petition could be considered as the material facts pleaded by the petitioner regarding the corrupt practice indulged by the 1st respondent by appealing to the voters on the basis of caste, community or ;language? In paragraph 13 of the petition it is stated that several persons referred to in the said paragraph had appealed to the voters that the border dispute between the State of Karnataka and the State of Maharashtra is in final stages and for the said purpose every body should stand firmly behind the 1st respondent for protecting marathi language and marathi culture. According to the averments made, the said persons had the consent of the 1st respondent and the 1st respondent was personally present in the said meeting, in the

said paragraph the news item regarding the said meeting published in Swatantra Pragathi Belgaum, a daily newspaper dated 21st April 2004 is referred to. From the speeches stated to have been made in marathi language by Sriyuths (1) Suresh Desai, (2) Pandurang Desai, (3) Balasaheb Shelar, (4) Maruti Kodachwakar and (5) Jangannath Birje, referred to in the said paper publication, I am unable to come to the conclusion that they had appealed to the voters to caste their votes in favour of 1st respondent because he speaks marathi or he is a maratha by caste. The appeal made, in my view, cannot be construed as an appeal made on the basis of language or caste. The speeches, stated to have been made by the persons referred to above appears to me that they had appealed to the voters to cast their votes in favour of the 1st respondent, since the border dispute is in final stage, and therefore, it is necessary to elect him for protecting marathi language and marathi culture and the same cannot be equated to an appeal made on the basis of language or culture. This is a difference in making an appeal to the voters to caste their vote in favour of the candidate on the basis of language of the candidate is a followers of a particular culture, and an appeal made to the voters that if the candidate, in whose favour an appeal is made is elected, he would protect the particular language or a particular culture.Therefore, the appeal made to the voters to cast their vote in favour of the 1st respondent on the basis that he speaks marathi language or he is a follower of marathi culture and an appeal made to the voters that if the 1st respondent is elected, he would protect the marathi lanuage and marathi culture, cannot be construed as an appeal made either on the basis of marathi language or culture. Every citizen of this country or a candidated who contests an election, has a right to protect every culture and language including his own culture and language. Further, the speeches made by the 1st respondent, which is published in the paper, clearly show that he expressed that while working strenuously for the solution of the border dispute and for the all round development of the taluk, he will sacrifice his body, mind and money for the victory of the Maharashtra Ekikarana Samithi. From this, it is not possible to take the view that an appeal was made to the voters to cast their votes in favour of the 1st respondent on the basis of marathi language or marathi culture.

26. In my view, the averments made in paragraph 8 to 14 of the petition, does not set out concisely the material facts relating to an appeal made either by the 1st respondent or his supporters with his consent either on the basis of caste or language or culture. The averments in the petition asserting that the 1st respondent appealed to the voters on the basis of community or language or culture, in my view, cannot be considered as a pleading of material facts as required under Clause (a) of Sub-section (1) of section 83 of the RF Act. The details or the facts relating to corrupt practice are required to be set out concisely. Under these circumstances, in my view, the principal laid down by AZHAR HUSSAIN (supra) while considering that the averments made in the petition should disclose th material facts, would directly apply to the facts of the present case, Therefore, in my view, the averments made in paragraphs 8 to 14 are liable to be struck off by this Court in exercise of its power under Order VI Rule 16 of code on the ground that the facts pleaded do not satisfy the requirement of Clause (a) of sub-section (1) of section 83 of the RP Act for want of material facts leading to incomplete cause of action.

Regarding 2nd question :

27. If paragraphs 8 to 14 of the petitioner are struck off, as noticed by me above, there is no averment in the petition which discloses a cause of action on the basis of which the relief sought for by the petitioner can be granted. Under these circumstances, the petition is liable to be rejected for want of cause of action in exercise of the power conferred on this Court under Order VII Rule 11 (a) of the Code. Further even if the averments made in paragraphs 8 to 14 of the petition are not required to be struck off in exerices of the power conferred on this Coure under order VI Rule 16 of the Code, however, as the averments made in the said paragraphs do not disclose a cause of action on the basis of which the election of the 1st respondent can be declared as null ans void, Iam of the view that the petition is liable to be dismissed on the ground for lack of cause of action in exercise of the power conferred on this court under Order VII Rule 11(a) of the Code. Accordingly the 2nd question is answered against the petitioner.

28. In the light of the discussion made above IA 3 of 2004 and IA. I of 2005 are allowed and the election petition is dismissed. However, no order is made as to costs. The amount depostited by the petitioner is directed to be returned to the petitioner.

By Order,

P.R. 21

TAPAS KUMAR

Secretary, Election Commission Of India.